

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA,
Plaintiff,

Civil Action No.

ATLAS TACK CORPORATION and
M. LEONARD LEWIS,
Defendants.

COMPLAINT

The United States of America, by and through the undersigned attorneys, by authority of the Attorney General of the United States and acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this claim and alleges that:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Sections 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9607 and 9613(g)(2) ("CERCLA"). The United States seeks the recovery, pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, of costs that have been incurred by the United States in response to the release and/or threatened release of hazardous substances at and from the Atlas Tack Corporation Superfund Site in Fairhaven,

Bristol County, Massachusetts (the "Site"). The United States further seeks a declaration, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that the Defendants are liable for future response costs that may be incurred by the United States in connection with the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c), because the release or threatened release of hazardous substances that gave rise to the United States' claims occurred in this district, the Site is located in this district, and the defendants reside in this district.

DEFENDANTS

4. Atlas Tack Corporation ("Atlas Tack") is a corporation organized under the laws of the Commonwealth of Massachusetts, with its principal place of business at 266 Beacon Street, Boston, Massachusetts.

5. M. Leonard Lewis ("Lewis") is an individual who resides in the Commonwealth of Massachusetts.

6. Each of the Defendants is a "person" within the meaning of Sections 101(21) and 107 of CERCLA, 42 U.S.C. §§ 9601(21) and 9607.

GENERAL FACTUAL ALLEGATIONS

7. The Site consists primarily of commercial property and wetlands, and includes, inter alia, the approximately 20-acre parcel owned by Atlas Tack, located at 83 Pleasant Street, Fairhaven, Massachusetts.

8. Sampling at the Site has indicated that soils and sediments are contaminated with hazardous substances including, without limitation, cyanide, zinc, copper, cadmium, arsenic, lead, antimony, polychlorinated biphenyls, pesticides, and polycyclic aromatic hydrocarbons. Groundwater sampling at the Site has indicated that the groundwater is contaminated with hazardous substances including, without limitation, toluene, cyanide, nickel, and zinc.

9. "Hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been "released" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), at the Site, or there have been threats of such releases into the environment within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

10. The Site is a "facility" within the meaning and scope of Section 9601(9) of CERCLA, 42 U.S.C. § 9601(9), because it is an area where hazardous substances have been deposited, stored, disposed of, placed, or otherwise come to be located.

A. History of the Site

11. On or about 1901, a company called Atlas Tack Corporation began to operate a business at the Site involving the manufacturing of tacks and other fasteners.

12. On or about 1920, a New York corporation, also called Atlas Tack Corporation ("Atlas Tack NY"), purchased the assets of the original Atlas Tack Corporation and continued to manufacture tacks and other fasteners at the Site until 1967.

13. In 1967, Great Northern Industries, Inc. ("Great Northern") acquired a controlling interest in Atlas Tack NY.

14. That same year, defendant Atlas Tack was incorporated in Massachusetts and Atlas Tack NY and Great Northern were merged into Atlas Tack. By virtue of this merger, Atlas Tack became a successor to Atlas Tack NY.

15. Atlas Tack continued manufacturing operations at the Site until about 1985.

16. Since the 1967 acquisition, Lewis has been the President of Atlas Tack and the sole shareholder of the voting

stock of Atlas Tack or of GNI, Inc., a holding company that, in about July, 1981, became the parent company of Atlas Tack.

17. Atlas Tack has been the owner of a portion of the Site since 1967.

B. Operations at the Site

18. From 1901 through 1985, Atlas Tack and its predecessors manufactured wire tacks, steel nails, rivets, bolts, shoe eyelets, and similar items at the Site. Atlas Tack's manufacturing operations included electroplating, acid-washing, enameling, and painting.

19. The manufacturing operations conducted at the Site by Atlas Tack generated waste materials that contained hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including, without limitation, cyanide, copper, cadmium, zinc, nickel, and toluene.

20. The waste materials generated by the manufacturing operations of Atlas Tack and its predecessors were disposed of by, among other methods, being discharged into floor drains and an on-site lagoon. Lagoon effluent discharged into the wetlands. Chemicals also permeated the floors and timbers of the Atlas Tack building and migrated to adjacent soils and groundwater. Waste materials were also dumped at various locations on the property.

21. There were "releases" of hazardous substances into the environment at the Site within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

22. Lewis has controlled and directed the activities of Atlas Tack with respect to the Site.

23. Lewis has made decisions for Atlas Tack specifically related to pollution in connection with the Site, including decisions related to handling and disposal of wastes from manufacturing operations, and decisions related to compliance with environmental laws and regulations.

24. There were disposals of hazardous substances at the Site during the period of time that Atlas Tack (and its predecessors) and Lewis were operators of the Site including, but not limited to, the discharge of waste materials into the lagoon located on the Atlas Tack property, the dumping of waste materials onto the Atlas Tack property, and the leaking and discharge of waste materials from the lagoon and waste piles on the Atlas Tack property into the surrounding environment.

C. Federal Response Actions

25. In February 1990, the Site was placed on the National Priorities List ("NPL"), established pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605. The NPL is a list of priority

hazardous waste sites in the United States.

26. On May 6, 1992, EPA issued an Action Memorandum to address an actual or threatened release of hazardous substances at the Site, including the presence of various hazardous substances at the Site including, without limitation, lead, chromium, copper and zinc. The Action Memorandum called for the construction of a fence around portions of the Site in order to prevent human exposure to hazardous substances located at the Site.

27. On September 28, 1992, EPA issued a Unilateral Administrative Order ("UAO"), pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), which required Atlas Tack to construct a fence around portions of the Site. Atlas Tack constructed the fence but has not properly maintained the fence.

28. A Remedial Investigation was initiated by EPA in 1991 and completed in May 1995. EPA then began a Feasibility Study, which was completed in 1998.

29. On March 4, 1999, EPA conducted a Preliminary Assessment/Site Investigation at the Site.

30. On May 27, 1999, EPA issued an Action Memorandum to address an actual or threatened release of hazardous substances at the Site, including the presence of asbestos in

unsecured buildings that posed a health risk to adjacent residents, on-site workers and trespassers. The Action Memorandum called for the removal of asbestos-containing materials from the rear three-story building and power plant at the Site and for the securing of the two-story administration/office building to prevent the release of asbestos-containing materials.

31. On August 9, 1999, EPA issued a second UAO to Atlas Tack for removal of asbestos-containing materials from the rear three-story building and power plant at the Site. The UAO also required Atlas Tack to secure the two-story administration/office building to prevent the release of asbestos-containing materials. Atlas Tack failed to comply with this UAO. Thereafter, EPA implemented the removal and removed the asbestos-containing materials.

32. EPA's March 10, 2000 Record of Decision ("ROD") memorialized the selected remedy for the Site, which includes: (i) off-site disposal of approximately 54,000 cubic yards of contaminated soil, debris and sediments at appropriate licensed waste disposal facilities; (ii) on-site treatment of some of the contaminated materials, where practicable; (iii) Site restoration activities; and (iv) monitored natural attenuation with

phytoremediation (planting of trees to lower the level of residually contaminated groundwater) to address contaminated groundwater.

33. EPA's actions at the Site constitute "response" actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

34. In undertaking response actions to address the release or threat of release of hazardous substances at the Site, the United States incurred response costs in excess of \$5.7 million, through January 10, 2003, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25). The prejudgment interest on such response costs, accruing from April 27, 1998 through January 17, 2003, is in excess of \$1 million. The United States continues to incur response costs within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

35. The response actions taken and the response costs incurred by the United States at the Site were not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), which was promulgated pursuant to Section 105(a) of CERCLA and is codified at 40 C.F.R. Part 300.

36. Defendants have not reimbursed the United States for the response costs the United States incurred, and continues to

incur, for response actions taken at the Site.

FIRST CLAIM FOR RELIEF

37. Paragraphs 1 through 36 are re-alleged and incorporated herein.

38. Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), provides, in pertinent part, as follows:

(1) the owner and operator of a vessel or a facility
. . . shall be liable for

(A) all costs of removal or remedial action
incurred by the United States Government . . . not
inconsistent with the national contingency plan . . .

The amounts recoverable in an action under this section shall include interest on the amounts recovered under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under sub-chapter A of chapter 98 of Title 26.

39. Defendant Atlas Tack is currently an owner of the Site.

40. Defendant Atlas Tack is jointly and severally liable to the United States pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), for all costs of response actions, including enforcement costs, incurred by the United States in connection with the release or threatened release of hazardous substances at the Site, and interest as provided for in that provision.

SECOND CLAIM FOR RELIEF

41. Paragraphs 1 through 36 are re-alleged and incorporated herein.

42. Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), provides, in pertinent part, as follows:

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of . . . shall be liable for

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan . . .

The amounts recoverable in an action under this section shall include interest on the amounts recovered under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under sub-chapter A of chapter 98 of Title 26.

43. Defendant Lewis was an operator of the Site at the time of the disposal of hazardous substances at the Site.

44. Defendant Atlas Tack was an owner and operator of the Site at the time of the disposal of hazardous substances at the Site.

45. Defendant Atlas Tack is also liable as the successor to Atlas Tack NY, which operated at the Site from about 1920 to 1967

and which was an owner and/or operator of the Site at the time of the disposal of hazardous substances at the Site.

46. Defendants Atlas Tack and Lewis are jointly and severally liable to the United States, pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), for all costs of response actions, including enforcement costs, incurred by the United States in connection with the release or threatened release of hazardous substances at the Site, and interest as provided for in that provision.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Order Defendants, jointly and severally, to reimburse the United States for all costs of the response actions taken at the Site, including interest, under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a);
2. Enter a declaratory judgment that Defendants are jointly and severally liable for all future response costs incurred by the United States in connection with the Site pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2);
3. Award the United States its costs in this action; and
4. Award other relief as this Court deems just and proper.

Respectfully submitted,

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